

10 Plaintiff Isaiah N. Williams, a state prisoner, has filed the
11 present pro se civil rights action pursuant to 42 U.S.C. § 1983
12 alleging constitutional rights violations while incarcerated at
13 Pelican Bay State Prison (PBSP). He has been granted leave to
14 proceed in forma pauperis. Plaintiff has also submitted a motion
15 for consideration and a motion to include supporting declarations.

16 Venue is proper in this district because the events giving
17 rise to the action occurred at PBSP, which is located in this
18 district. See 28 U.S.C. § 1331(b).

19 || BACKGROUND

20 Plaintiff alleges that Defendant PBSP Correctional Officer D.
21 Williams violated his constitutional rights. Specifically,
22 Plaintiff claims that on August 12, 2006, Defendant Williams
23 searched his cell at PBSP's Security Housing Unit and threw away
24 several of his school books. Plaintiff confronted Defendant
25 Williams about the search being "excessive" and informed her that
26 he "would be filing a grievance against her." (Compl. at 3B.)
27 Plaintiff claims that Defendant Williams "became even more angry"
28 and said, "We can play this any way you want." (Id.) She then

1 turned back to Plaintiff and asked, "Aren't you up for inactive?"
2 (Id.) Plaintiff claims that Defendant Williams "sneered" when she
3 asked him that question. According to Plaintiff, being inactive
4 "refers to the current policy of giving validated inmates the
5 opportunity of earning their way to general population by staying
6 out of trouble for six months" (Id.) Plaintiff claims
7 that based on his "understanding of the defendant's statements,"
8 she was "threatening to create a situation that would be used to
9 deny [him] inactive status as retaliation for the confrontation and
10 the fact that [he] intended to file a grievance against her." (Id.
11 at 3B-3C.)

12 On August 16, 2006, Defendant Williams was working as the
13 control booth operator, whose duties also included acting as the
14 "gunner." (Id. at 3C.) Plaintiff claims that during his tier's
15 shower day, Defendant Williams created a violent confrontation
16 between himself and an African American inmate, especially in light
17 of the fact that "it is widely known by correctional officers that
18 there is a story of assaultive behavior between black and white
19 inmates." (Id.) Plaintiff states that instead of opening the cell
20 door of the African American inmate who had just exited the shower,
21 Plaintiff's cell door was opened. Thus, Plaintiff states, "the
22 defendant, know the history, acted with reckless disregard for my
23 and another inmate's safety when she deliberately openned [sic] my
24 cell door intentionally setting up a fight between myself and the
25 above mentioned inmate, therebye [sic] giving her the ability to
26 use her position as gunner to deliberately and wantonly target and
27 shoot me in retaliation for our previous conversation." (Id. at
28 3C-3D.) A fight then ensued between Plaintiff and the African

1 America inmate, named Powell. (Pl.'s Ex. A, Rules Violation Report
2 dated Sept. 3, 2006, Part C at 1.) Plaintiff claims Defendant
3 Williams then shot him four times with "forty millimeter (40 mm.)
4 exact impact rounds in the back, head and arm." (Id. at 3D.)
5 Plaintiff and inmate Powell continued to fight. (Pl.'s Ex. A,
6 Rules Violation Report dated Aug. 19, 2006.) Prison officials used
7 pepper spray on Plaintiff and inmate Powell, and the fighting
8 stopped. (Id.) Both inmates were placed in mechanical restraints,
9 decontaminated and re-housed. (Id.) Plaintiff claims that because
10 of this incident, he suffered from "headaches, earaches, lower back
11 pain, and numbness in [his] head and legs." (Id. at 3G.)

12 Plaintiff was issued a Rules Violation Report for battery on a
13 prisoner with no serious injury. (Pl.'s Ex. A, Rules Violation
14 Report dated Sept. 3, 2006, Part C at 2.) During a hearing on
15 September 3, 2006, he was found guilty of the charge and assessed a
16 ninety-day credit forfeiture. (Id.)

17 Plaintiff claims that he was not given the opportunity to
18 attend his September 3, 2006 hearing. He claims that on September
19 11, 2006, he received his "disposition report" stating that on
20 September 3, 2006, he "refused to attend [his] CDC 115 hearing and
21 to sign a 128-B refusal slip [and] . . . that the defendant and the
22 control both [sic] operator were witnesses to [his] supposed
23 refusals." (Compl. at 3E.) Plaintiff denies this, stating: "In
24 no way, shape or form did the defendant ask me if I wanted to
25 attend a CDC-115 hearing, nor whether I was willing to sign the
26 above-mentioned CDC 128-B refusal slip . . ." (Id.) Plaintiff
27 claims that the only time he spoke to Defendant Williams about his
28 disciplinary hearing was on September 3, 2006, while she was

1 picking up his dinner tray. Plaintiff states Defendant Williams
2 asked him, "Have you gone to your CDC 115 hearing yet?" (Id.) He
3 replied that he had not. Defendant Williams then asked him, "Do
4 you have anything . . . you want to say to me?" (Id.) Plaintiff
5 states, "I ignored the defendant's attemp [sic] to goad me into
6 another confrontation and walked to the back of my cell without
7 saying anything." (Id.)

8 Plaintiff alleges he has exhausted his administrative remedies
9 as to all his claims. He seeks injunctive relief and monetary
10 damages.

11 DISCUSSION

12 I. Standard of Review

13 A federal court must conduct a preliminary screening in any
14 case in which a prisoner seeks redress from a governmental entity
15 or officer or employee of a governmental entity. See 28 U.S.C.
16 § 1915A(a). In its review, the court must identify cognizable
17 claims and dismiss any claims that are frivolous, malicious, fail
18 to state a claim upon which relief may be granted or seek monetary
19 relief from a defendant who is immune from such relief. See id.
20 § 1915A(b)(1),(2). Pro se pleadings must, however, be liberally
21 construed. See Balistreri v. Pacifica Police Dep't, 901 F.2d 696,
22 699 (9th Cir. 1988).

23 To state a claim under 42 U.S.C. § 1983, a plaintiff must
24 allege two essential elements: (1) that a right secured by the
25 Constitution or laws of the United States was violated, and
26 (2) that the alleged violation was committed by a person acting
27 under the color of state law. See West v. Atkins, 487 U.S. 42, 48
28 (1988).

1 II. Legal Claims

2 A. Eighth Amendment Claim

3 The Eighth Amendment requires that prison officials take
4 reasonable measures to guarantee the safety of prisoners. See
5 Farmer v. Brennan, 511 U.S. 825, 832 (1994). In particular, prison
6 officials have a duty to protect prisoners from violence at the
7 hands of other prisoners. See id. at 833; Hoptowit v. Ray, 682
8 F.2d 1237, 1250 (9th Cir. 1982); Gillespie v. Civiletti, 629 F.2d
9 637, 642 & n.3 (9th Cir. 1980). However, a prison official
10 violates the Eighth Amendment only when two requirements are met:
11 (1) the deprivation alleged is, objectively, sufficiently serious;
12 and (2) the prison official is, subjectively, deliberately
13 indifferent to inmate safety. See Farmer, 511 U.S. at 834.
14 Deliberate indifference occurs when an official knows of and
15 disregards an excessive risk to inmate health or safety. See id.
16 at 837. The official must both be aware of facts from which the
17 inference could be drawn that a substantial risk of serious harm
18 exists, and he must also draw the inference. See id. Neither
19 negligence nor gross negligence are sufficient to constitute
20 deliberate indifference. See id. at 835-36 & n.4; see also Estelle
21 v. Gamble, 429 U.S. 97, 106 (1976) (establishing that deliberate
22 indifference requires more than negligence).

23 Liberally construing the allegations in the complaint, the
24 Court finds that Plaintiff has stated a cognizable Eighth Amendment
25 claim against Defendant Williams.

26 B. Retaliation

27 "Within the prison context, a viable claim of First Amendment
28 retaliation entails five basic elements: (1) An assertion that a

1 state actor took some adverse action against an inmate (2) because
2 of (3) that prisoner's protected conduct, and that such action
3 (4) chilled the inmate's exercise of his First Amendment rights,
4 and (5) the action did not reasonably advance a legitimate
5 correctional goal." Rhodes v. Robinson, 408 F.3d 559, 567-68 (9th
6 Cir. 2005) (footnote omitted). To prove retaliation, a plaintiff
7 must show that the defendants took adverse action against him or
8 her that "would chill or silence a person of ordinary firmness from
9 future First Amendment activities." White v. Lee, 227 F.3d 1214,
10 1228 (9th Cir. 2000) (citing Mendocino Envtl. Ctr. v. Mendocino
11 County, 192 F.3d 1283, 1300 (9th Cir. 1999)).

12 Plaintiff alleges that Defendant Williams retaliated against
13 him because he intended to file an inmate grievance against her for
14 the "excessive" cell search on August 12, 2006. Specifically,
15 Plaintiff argues that a retaliatory motive can be inferred against
16 Defendant Williams because a few days after the cell search, the
17 August 16, 2006 incident took place. Plaintiff claims Defendant
18 Williams orchestrated the assault in retaliation for the grievance
19 he intended to file against her. Liberally construed, Plaintiff's
20 allegations state a cognizable retaliation claim against Defendant
21 Williams.

22 C. Claims Related to Plaintiff's September 3, 2006 Hearing
23 Plaintiff asserts that he was found guilty of battery on a
24 prisoner with no serious injury -- stemming from the August 16,
25 2006 incident -- without being present at the September 3, 2006
26 hearing, in violation of his due process and equal protection
27 rights. Based on the guilty finding, Plaintiff was assessed a
28 ninety-day credit forfeiture.

1 1. Due Process Claim

2 An inmate in California is entitled to due process before
3 being disciplined when the discipline imposed will inevitably
4 affect the duration of his sentence or causes an "atypical and
5 significant hardship on the inmate in relation to the ordinary
6 incidents of prison life." Sandin v. Conner, 515 U.S. 484, 487
7 (1995). The process due in such a prison disciplinary proceeding
8 includes written notice, time to prepare for the hearing, a written
9 statement of decision, allowance of witnesses and documentary
10 evidence when not unduly hazardous, and aid to the accused where
11 the inmate is illiterate or the issues are complex. Wolff v.
12 McDonnell, 418 U.S. at 564-7. Due process also requires that there
13 be "some evidence" to support the disciplinary decision.
14 Superintendent v. Hill, 472 U.S. 445, 454 (1985). The Due Process
15 Clause only requires that prisoners be afforded those procedures
16 mandated by Wolff and its progeny; it does not require that a
17 prison comply with its own, more generous procedures. See Walker
18 v. Sumner, 14 F.3d 1415, 1419-20 (9th Cir. 1994).

19 Plaintiff alleges that Defendant Williams prevented him from
20 being present at his September 3, 2006 disciplinary hearing by
21 falsifying a CDC Form 128-B and informing the hearing officer that
22 Plaintiff refused to attend the hearing. Liberally construed, the
23 allegations in the complaint state a cognizable due process claims
24 against Defendant Williams.

25 2. Equal Protection Claim

26 "The Equal Protection Clause of the Fourteenth Amendment
27 commands that no State shall 'deny to any person within its
28 jurisdiction the equal protection of the laws,' which is

1 essentially a direction that all persons similarly situated should
2 be treated alike." City of Cleburne v. Cleburne Living Center, 473
3 U.S. 432, 439 (1985) (quoting Plyler v. Doe, 457 U.S. 202, 216
4 (1982)). A plaintiff alleging denial of equal protection under 42
5 U.S.C. § 1983 must plead intentional unlawful discrimination or
6 allege facts that are at least susceptible of an inference of
7 discriminatory intent. See Monteiro v. Tempe Union High School
8 Dist., 158 F.3d 1022, 1026 (9th Cir. 1998). A plaintiff must
9 demonstrate that state actors "acted with the intent to
10 discriminate." Sischo-Nownejad v. Merced Community College Dist.,
11 934 F.2d 1104, 1112 (9th Cir. 1991).

12 Plaintiff does not allege that he was found guilty of the
13 battery because of his race. In the body of the complaint, his
14 allegations of racial discrimination are conclusory and ambiguous.
15 Thus, the Court finds that Plaintiff has not stated a cognizable
16 equal protection claim.

17 Accordingly, Plaintiff's equal protection claim against
18 Defendant Williams is DISMISSED.

19 CONCLUSION

20 For the foregoing reasons, the Court orders as follows:

21 1. Plaintiff has stated cognizable Eighth Amendment,
22 retaliation and due process claims against Defendant Williams.

23 2. Plaintiff's equal protection claim against Defendant
24 Williams is DISMISSED for failure to state a claim.

25 3. The Clerk of the Court shall mail a Notice of Lawsuit and
26 Request for Waiver of Service of Summons, two copies of the Waiver
27 of Service of Summons, a copy of the complaint and all attachments
28 thereto (docket no. 1) and a copy of this Order to Defendant Former

1 PBSP Correctional Officer D. Williams at the Richard J. Donovan
2 Correctional Facility in San Diego, California. The Clerk of the
3 Court shall also mail a copy of the complaint and a copy of this
4 Order to the State Attorney General's Office in San Francisco.
5 Additionally, the Clerk shall mail a copy of this Order to
6 Plaintiff.

7 4. Defendant is cautioned that Rule 4 of the Federal Rules
8 of Civil Procedure requires Defendant to cooperate in saving
9 unnecessary costs of service of the summons and complaint.
10 Pursuant to Rule 4, if Defendant, after being notified of this
11 action and asked by the Court, on behalf of Plaintiff, to waive
12 service of the summons, fail to do so, Defendant will be required
13 to bear the cost of such service unless good cause be shown for
14 Defendant's failure to sign and return the waiver form. If service
15 is waived, this action will proceed as if Defendant had been served
16 on the date that the waiver is filed, except that pursuant to Rule
17 12(a)(1)(B), Defendant will not be required to serve and file an
18 answer before sixty (60) days from the date on which the request
19 for waiver was sent. (This allows a longer time to respond than
20 would be required if formal service of summons is necessary.)
21 Defendant is asked to read the statement set forth at the foot of
22 the waiver form that more completely describes the duties of the
23 parties with regard to waiver of service of the summons. If
24 service is waived after the date provided in the Notice but before
25 Defendant has been personally served, the Answer shall be due sixty
26 (60) days from the date on which the request for waiver was sent or
27 twenty (20) days from the date the waiver form is filed, whichever
28 is later.

1 5. Defendant shall answer the complaint in accordance with
2 the Federal Rules of Civil Procedure. The following briefing
3 schedule shall govern dispositive motions in this action:

4 a. No later than thirty (30) days from the date the
5 answer is due, Defendant shall file a motion for summary judgment
6 or other dispositive motion. The motion shall be supported by
7 adequate factual documentation and shall conform in all respects to
8 Federal Rule of Civil Procedure 56. If Defendant is of the opinion
9 that this case cannot be resolved by summary judgment, Defendant
10 shall so inform the Court prior to the date the summary judgment
11 motion is due. All papers filed with the Court shall be promptly
12 served on Plaintiff.

13 b. Plaintiff's opposition to the dispositive motion
14 shall be filed with the Court and served on Defendant no later than
15 thirty (30) days after the date on which Defendant's motion is
16 filed. The Ninth Circuit has held that the following notice should
17 be given to pro se plaintiffs facing a summary judgment motion:

18 The defendants have made a motion for summary
19 judgment by which they seek to have your case dismissed.
20 A motion for summary judgment under Rule 56 of the
Federal Rules of Civil Procedure will, if granted, end
your case.

21 Rule 56 tells you what you must do in order to
22 oppose a motion for summary judgment. Generally, summary
23 judgment must be granted when there is no genuine issue
24 of material fact -- that is, if there is no real dispute
about any fact that would affect the result of your case,
the party who asked for summary judgment is entitled to
judgment as a matter of law, which will end your case.
When a party you are suing makes a motion for summary
judgment that is properly supported by declarations (or
other sworn testimony), you cannot simply rely on what
your complaint says. Instead, you must set out specific
facts in declarations, depositions, answers to
interrogatories, or authenticated documents, as provided
in Rule 56(e), that contradict the facts shown in the
defendant's declarations and documents and show that
there is a genuine issue of material fact for trial. If

1 you do not submit your own evidence in opposition,
2 summary judgment, if appropriate, may be entered against
3 you. If summary judgment is granted [in favor of the
defendants], your case will be dismissed and there will
be no trial.

4 See Rand v. Rowland, 154 F.3d 952, 962-63 (9th Cir. 1998) (en
5 banc).

6 Plaintiff is advised to read Rule 56 of the Federal Rules of
7 Civil Procedure and Celotex Corp. v. Catrett, 477 U.S. 317 (1986)
8 (party opposing summary judgment must come forward with evidence
9 showing triable issues of material fact on every essential element
10 of his claim). Plaintiff is cautioned that because he bears the
11 burden of proving his allegations in this case, he must be prepared
12 to produce evidence in support of those allegations when he files
13 his opposition to Defendant's dispositive motion. Such evidence
14 may include sworn declarations from himself and other witnesses to
15 the incident, and copies of documents authenticated by sworn
16 declaration. Plaintiff will not be able to avoid summary judgment
17 simply by repeating the allegations of his complaint.

18 c. If Defendant wishes to file a reply brief, Defendant
19 shall do so no later than fifteen (15) days after the date
20 Plaintiff's opposition is filed.

21 d. The motion shall be deemed submitted as of the date
22 the reply brief is due. No hearing will be held on the motion
23 unless the Court so orders at a later date.

24 6. Discovery may be taken in this action in accordance with
25 the Federal Rules of Civil Procedure. Leave of the Court pursuant
26 to Rule 30(a)(2) is hereby granted to Defendant to depose Plaintiff
27 and any other necessary witnesses confined in prison.

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1 7. All communications by Plaintiff with the Court must be
2 served on Defendant, or Defendant's counsel once counsel has been
3 designated, by mailing a true copy of the document to Defendant or
4 Defendant's counsel.

5 8. It is Plaintiff's responsibility to prosecute this case.
6 Plaintiff must keep the Court informed of any change of address and
7 must comply with the Court's orders in a timely fashion.

8 9. Extensions of time are not favored, though reasonable
9 extensions will be granted. Any motion for an extension of time
10 must be filed no later than fifteen (15) days prior to the deadline
11 sought to be extended.

12 10. Plaintiff's motion for consideration (docket no. 24),
13 which is construed as motion to screen the complaint, is GRANTED.
14 His motion to include supporting declarations (docket no. 25),
15 including declarations from five inmates regarding the August 16,
16 2006 incident, is also GRANTED.

17 11. This Order terminates Docket nos. 24 and 25.

18 IT IS SO ORDERED.

19 Dated: 1/21/10



CLAUDIA WILKEN
UNITED STATES DISTRICT JUDGE

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UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

ISAIAH N WILLIAMS,

Plaintiff,

V.

D WILLIAMS et al,

Defendant.

Case Number: CV07-04464 CW

CERTIFICATE OF SERVICE

D WILLIAMS et al,
Defendant.

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on January 21, 2010, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Isaiah Noel Williams K-33769
Pelican Bay State Prison
P.O. Box 7000
5905 Lake Earl Drive
Crescent City, CA 95531

Dated: January 21, 2010

Richard W. Wieking, Clerk
By: Sheilah Cahill, Deputy Clerk